

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT PINDER,

Plaintiff-Appellee,

v

MITCHELL CORPORATION OF OWOSSO and
MITCHELL MANUFACTURING GROUP, INC.,

Defendants,

and

ERIK G. CHAPPELL,

Defendant-Appellant.

UNPUBLISHED

April 25, 2006

No. 258766

Oakland Circuit Court

LC No. 1999-014916-CK

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ

PER CURIAM.

Defendant Erik Chappell, an attorney, appeals as of right from the trial court's judgment affirming an arbitrator's judgment. The arbitrator resolved a breach of contract dispute between plaintiff and defendant's client, Mitchell Corporation of Owosso, by awarding plaintiff \$253,522.66 on the contract claim. At issue here is the arbitrator's imposition of a sanction of \$25,000 against defendant for his failure to attend a scheduled arbitration hearing on September 21 and 22, 2000, without good cause.¹ We remand for modification of the judgment with respect to the amount of the sanction only; the applicable court rule provides only for compensatory damages, specifically the costs of the arbitrator and court reporter, and any amount in excess of those actual damages is speculative, punitive, and outside the arbitrator's discretion.

¹ For purposes of this opinion, "defendant" refers only to defendant Erik Chappell. Chappell's brief on appeal also identifies Mitchell Corporation of Owosso as an appellant, but the claim of appeal filed with this Court indicates that only Chappell was filing an appeal from the trial court's judgment and, therefore, Mitchell Corporation is not a party to this appeal.

This Court reviews de novo issues regarding orders to enforce, vacate, or modify arbitration awards. *Saveski v Tiseo Architects, Inc.*, 261 Mich App 553, 554; 682 NW2d 542 (2004). A court may vacate an arbitration award if “there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights,” or if “the arbitrator exceeded his powers.” MCR 3.602(J)(1)(b) and (c).

Defendant first argues that the arbitrator exceeded his powers by imposing the \$25,000 sanction without first providing notice and an opportunity to be heard, claiming that because the award was clearly punitive rather than compensatory, he was entitled to criminal procedural safeguards before the sanction could properly be imposed. Compensatory sanctions are designed “to make the injured party whole for the losses actually suffered, the amount of recovery for such damages is inherently limited by the amount of loss.” *46th Circuit Trial Court v Crawford Co.*, 266 Mich App 150, 188-189; 702 NW2d 588 (2005). Here, the circumstances and amount of the sanction do indicate that the sanction was punitive. However, defendant fails to cite any authority to establish that the due process procedures applicable in a trial court apply equally in arbitration: “An arbitration hearing is not a court of law.” *City of Dearborn v Freeman-Darling, Inc.*, 119 Mich App 439, 443; 326 NW2d 831 (1982), quoting *Walden v Local 71, Int’l Brotherhood of Teamsters*, 468 F2d 196 (CA 4, 1972). In any event, defendant cannot avail himself of the Due Process Clause because the state did not compel the arbitration. *City of Dearborn, supra* at 442 (Due Process Clause only applies to state actions, not to private conduct). Here, the parties agreed to submit to arbitration, and there is no suggestion that they were compelled to do so.

Although not violative of due process, the imposition of a punitive award does exceed an arbitrator’s authority: “Arbitrators exceed their power when they act . . . in contravention of controlling principles of law.” *Saveski, supra* at 554. The controlling principles that govern arbitration are the applicable court rules. MCL 600.5021 Here the arbitrator’s stated reason for the sanction was defendant’s failure to attend a scheduled hearing without good cause. MCR 3.602² governs arbitration proceedings; subsection (F)(1) of the rule states that “MCR 2.506 applies to arbitration hearings.” MCR 2.506(F) identifies the penalties for failure to attend a proceeding, and the only monetary sanction included in that rule is to tax costs to the other party.

We therefore conclude that the arbitrator was limited to requiring defendant to pay the costs associated with the failure to attend the September 2000 hearing, which the arbitrator previously determined were \$1,675.³ Accordingly, the arbitrator exceeded his authority by imposing a sanction of \$25,000, and the trial court likewise erred in confirming this aspect of the arbitration award. We remand to the trial court for the limited purpose of modifying the judgment to reflect a sanction of \$1,675 against defendant.

² Defendant argues that the sanction was improper because MCR 2.114(E) and (F) prohibit punitive sanctions, but although these court rules do prohibit punitive sanctions, they are not applicable here. MCR 2.114(E) applies only to sanctions imposed for signing a document in violation of the rule; MCR 2.114(F) applies where a party pleads a frivolous claim or defense.

³ \$1,600 for the arbitrator’s fee and \$75 for the court reporter’s fee

We find no merit in defendant's remaining arguments. Although defendant argues that the arbitrator erred in finding that he had adequate notice of the September 2000 hearing and that the defense was not prepared to proceed, an arbitrator's findings of fact and decisions on the merits are not reviewable. *Byron Ctr Pub Schools Bd of Ed v Kent Co Ed Ass'n*, 186 Mich App 29, 31; 463 NW2d 112 (1990).

We also reject defendant's claim that the sanction award must be vacated because the arbitrator was not impartial. "Partiality or bias which will allow a court to overturn an arbitration award must be certain and direct, not remote, uncertain or speculative." *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). "MCR 3.502(J)(1)(b), by its own terms, indicates a degree of partiality that is readily observable." *Id.* It is not apparent that the mere imposition of the \$25,000 sanction shows the arbitrator's "readily observable" partiality.⁴ Defendant's argument that the entire arbitration award should be vacated because the arbitrator's "evident partiality" denied Mitchell Corporation a fair hearing fails for the same reason; a successful challenge of an arbitration award requires a significant showing of actual partiality, and defendant simply has not met that burden here.

Accordingly, we hold that the award of a punitive sanction exceeded the arbitrator's authority but does not indicate such evident partiality as is required to overturn the arbitrator's decision on the underlying claim. We therefore vacate the portion of the trial court's judgment awarding a \$25,000 sanction against defendant and remand the case to the trial court for the purpose of modifying the judgment to reflect a sanction amount of \$1,675.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

⁴ The record does not indicate partiality for plaintiff: when defendant failed to attend a scheduled hearing, the arbitrator rescheduled; the arbitrator assured defendant that the inconvenience caused by this rescheduling would not affect his objectivity; the arbitrator allowed defendant to present witnesses and exhibits on Mitchell Corporation's behalf, over plaintiff's objection, despite the fact that defendant never filed a witness or exhibit list.